

October 5, 2004

D.P.U./D.T.E. 97-88/97-18 (Phase II)

Investigation by the Department of Telecommunications and Energy on its own Motion regarding (1) Implementation of Section 276 of the Telecommunications Act of 1996 relative to Public Interest Payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New England Telephone and Telegraph d/b/a NYNEX's Public Access Smart-Pay Line Service, and (4) the Rate Policy for Operator Service Providers.

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ORDER ON COMPLIANCE FILING OF VERIZON MASSACHUSETTS

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ORDER ON COMPLIANCE FILING OF VERIZON MASSACHUSETTSI. INTRODUCTION

On June 23, 2004, the Department of Telecommunications and Energy (“Department”) issued an order in D.P.U./D.T.E. 97-88/97-18 (Phase II) (“June 23, 2004 Order”), in which the Department directed Verizon Massachusetts (“Verizon”) to submit compliance tariffs regarding its Public Access Line (“PAL”) and Public Access Smart-Pay Line (“PASL”) services. On July 22, 2004, Verizon submitted a Compliance Filing,<sup>1</sup> and on July 29, 2004, the New England Public Communications Council, Inc. (“NEPCC”) filed comments on Verizon’s Compliance Filing (“NEPCC Comments”). On August 5, 2004, Verizon filed a reply to NEPCC’s Comments (“Verizon Reply”). On August 9, 2004, the Attorney General for the Commonwealth of Massachusetts (“Attorney General”) also filed comments on Verizon’s Compliance Filing (“Attorney General Comments”). On August 17, 2004, Verizon filed a reply to the Attorney General Comments (“Verizon Reply to Attorney General”), and responses to two requests for information concerning the Compliance Filing issued by the Department. Also, NEPCC replied to the Attorney General’s Comments by letter dated August 26, 2004 (“NEPCC Letter”). On September 16, 2004, and September 21, 2004, Verizon substituted certain pages of its proposed tariff in response to the comments filed by NEPCC (“September 16 and 21, 2004 filings”).

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<sup>1</sup> Verizon’s July 22, 2004 Compliance Filing included proposed tariff pages and revenue effect workpapers.

## II. VERIZON'S COMPLIANCE FILING

### A. Overview of Verizon's Proposed Tariff Changes

Verizon's proposed tariff pages include the introduction of a new wholesale tariff for the provision of payphone services (D.T.E. MA No. 18), the removal of payphone services from the existing retail tariff (D.T.E. MA No. 10), and the removal of resale provisions for payphone services from the existing resale tariff (D.T.E. MA No. 14) (Verizon Compliance Filing at 1). In addition, the filing includes a \$.34 increase in basic residential service rates to offset the revenue reductions associated with payphone service repricing (id.). In the filing, Verizon applies the rate increase to Residential Dial Tone Line and the following service offerings: Suburban, Metropolitan, Circle Calling, Baystate East – Metropolitan, Baystate East – Non-Metropolitan, Call Around 413 Plus, and Eastern LATA Unlimited Calling Plan (id.). In addition, the Lifeline credit is increased by \$.34 (i.e., from \$11.95 to \$12.29) (id.).

### B. Positions of the Parties

#### 1. NEPCC

In its comments, NEPCC argues that Verizon's Compliance Filing is inconsistent with the requirements and directives of the Department's June 23, 2004 Order in several respects (NEPCC Comments at 1-2). NEPCC argues that the language in Verizon's proposed new tariff that automatically ties rates for PAL and PASL to any changes in rates for unbundled network elements ("UNEs") must be revised (id. at 2). NEPCC argues that the Department's decision to price payphone services at UNE levels is separate from the Department's mandate in this docket to price payphone services in compliance with Federal Communications

Commission (“FCC”) requirements (id. at 3). As such, NEPCC argues that the automatic “tie-in” proposed by Verizon that links rates for payphone access services (governed by Section 276 of the Act<sup>2</sup>) to UNE rates (governed by Sections 251 and 252 of the Act) is inappropriate (id. at 4).

Further, NEPCC argues that there are several sections of Verizon’s proposed tariff that are unnecessary (id. at 4-7). Specifically, NEPCC argues that the tariff sections regarding billing options, the elimination of the PAL credit, Operator Call Completion (“OCC”) charges, and the general tariff provisions contained in Part A of the proposed tariff, are not required by the Department’s Order and should not be included in Verizon’s tariff (id. at 4-7). In addition, NEPCC argues that the tariff section pertaining to the ten call allowance for directory assistance (“DA”) service must be clarified to include PAL and PASL lines (id. at 6).

Finally, in response to the Attorney General’s recommendation that the Department should further investigate Verizon’s proposed residential rate increase, NEPCC argues that the Department should not delay implementation of payphone access line rate changes because of cost recovery issues (NEPCC Letter at 1).

## 2. Attorney General

In his comments, the Attorney General argues that the Department should evaluate whether Verizon has met the standard of review for an exogenous cost adjustment under the Alternative Regulation Plan developed in D.T.E. 01-31, and whether Verizon has provided

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<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq. (the “Act”).

adequate explanation for its exclusion of over half of the residential dial tone lines from the proposed rate increase (Attorney General Comments at 3-4). In addition, the Attorney General argues that the Department should bifurcate the exogenous cost adjustment investigation to a separate track or phase of this proceeding (id.).

### 3. Verizon

In its reply to NEPCC's Comments on its Compliance Filing, Verizon agrees to remove the language from its proposed tariff regarding the "tying" of PAL rates in tariff D.T.E. MA No. 18 to the UNE rates available under tariff D.T.E. MA No. 17 (Verizon Reply at 1). In addition, Verizon argues that there is no need to modify its proposed tariff language regarding OCC, as Verizon's proposed tariff makes no change in the current billing or functionality of this feature (id.). Likewise, Verizon argues that its proposed tariff makes no changes to the summary billing options currently available to payphone service providers, therefore, NEPCC's objection to this section is without merit (id. at 3).

Also, Verizon argues that NEPCC's objection to Verizon's proposal of a separate tariff for payphone services is unfounded (id. at 1-2). The Department's Order, according to Verizon, specified that payphone services should be removed from Verizon's retail tariff into a wholesale tariff, and Verizon argues that its proposed tariff D.T.E. MA No. 18 is consistent with that requirement (id. at 2). Verizon argues that its proposed tariff does not add more burdensome or restrictive regulations, as NEPCC argues, but rather mirrors the general terms and conditions currently found in tariff D.T.E. MA No. 10 (id.). Moreover, Verizon argues that the language in its proposed tariff makes clear that the ten call allowance for Directory

Assistance Service applies to PALs and PASLs as business services, and, therefore, there is no need to modify this section of Verizon's proposed tariff (id. at 2-3).

Verizon further argues that NEPCC's opposition to Verizon's elimination of the PAL credit is without merit (id. at 3). The PAL credit, argues Verizon, was designed to provide a discount on retail-based, business exchange lines applicable to PAL subscribers, and was never intended to apply to wholesale services priced at total element long-run incremental cost ("TELRIC") (id.). Verizon argues that it would be unreasonable and inconsistent with TELRIC methodology to apply a PAL credit once payphone services move from a retail to a wholesale classification (id.).

Responding to the Attorney General's Comments, Verizon argues that the Department should reject the Attorney General's objections to Verizon's proposed rate changes (Verizon Reply to Attorney General at 1). Verizon argues that there is no need for the Department to open an exogenous cost investigation because the Department has already decided in its D.T.E. 01-31 proceeding that Verizon may impose a revenue-neutral offset relating to repricing of its "wholesale-like" services, including PAL and PASL (id.). Verizon argues that although the Department deferred to this proceeding the quantification of the revenue effect associated with PAL and PASL repricing, the Department did not suggest that the repricing of PAL and PASL should be treated differently in terms of revenue neutrality than the repricing of Verizon's other wholesale-like services (id. at 3).

Verizon further argues that no additional investigation is needed to quantify the revenue effect of the PAL and PASL repricing (id.). Verizon argues that computing the revenue effect

is a simple, straight-forward analysis and the fact that the offset is applied to certain and not all residential services is consistent with Department policies and the pricing flexibility afforded Verizon in the Alternative Regulation Plan (id. at 3-4). Moreover, with regard to the staleness of the data, Verizon claims that the Attorney General is incorrect; even if the weighting used were to vary, there would be a minimal effect on the projected annual revenue loss, because the weighting range between interoffice and intraoffice usage is narrow (id. at 3). Lastly, Verizon argues that even if the Department determines that a further examination of Verizon's offset proposal is warranted, the Department should not bifurcate the case as suggested by the Attorney General (id. at 5). Rather, argues Verizon, in order to keep Verizon whole, the Department should ensure that the PAL and PASL rate reductions occur coincident with the rate changes in other services (id.)

C. Analysis and Findings

1. Proposed Tariff Language

As an initial matter, we do not agree with NEPCC's objection to Verizon's proposal of a new tariff, D.T.E. MA No. 18, and including within it the general terms and conditions from tariff D.T.E. MA No. 10 concerning payphone access services. In the Department's June 23, 2004 Order at 21 n.18, the Department required Verizon to remove PAL and PASL services from tariff D.T.E. MA No. 10 and to place them in an appropriate wholesale tariff. Therefore, Verizon's proposal for a new, separate tariff for payphone access services is in compliance with our directives. In addition, the general terms and conditions included in Part A of Verizon's proposed tariff have been carried over nearly verbatim from the terms and

conditions that previously applied to PAL and PASL services under tariff D.T.E. MA No. 10. These tariff provisions are necessary to the provision of the services, and because they are virtually identical to the previous provisions, we determine that they are no more burdensome or restrictive.

We also determine that NEPCC's objections to several of Verizon's proposed tariff provisions are without merit. For example, we determine that Verizon's proposed tariff makes no change to the existing OCC features or related billing, and does not make OCC a mandatory, bundled feature (see CFR-DTE-VZ-2). Likewise, Verizon has not proposed to change the billing options, including the option for summary billing, available to payphone providers in tariffs D.T.E. MA Nos. 18 and 10. On the contrary, Verizon proposes to offer the same billing options to payphone providers. In addition, Verizon's proposed tariff D.T.E. MA No. 18, cross-referencing tariff D.T.E. MA No. 10, indicates that the DA ten-call allowance for business services will apply to PALs and PASLs (see D.T.E. MA No. 18, Part A, Section 1.8.1.B.2). Therefore, we determine that no changes to these tariff provisions are necessary.

Also, we determine that the PAL credit is properly eliminated. In New England Telephone and Telegraph Co., D.P.U. 89-300, at 273-274 (June 29, 1990), the Department required Verizon (then New England Telephone and Telegraph Company ("NET")) to provide payphone providers a 20 percent credit on all charges for services Verizon provides either directly to payphone providers, such as PAL services, or to end users of payphone services providers, in order to address potential anti-competitive effects of Verizon's wholesale/retail



rate relationship.<sup>3</sup> Now that we have reclassified payphone access services as wholesale services and set their rates at UNE (i.e., TELRIC) levels, the rationale for the credit no longer exists and maintaining the credit would give payphone providers rates lower than those at cost-based UNE levels. Accordingly, we deny NEPCC's request to maintain the credit.

In its substituted tariff pages filed with the Department on September 16 and 21, 2004, Verizon modified several other proposed tariff provisions that were challenged by NEPCC in its comments. For example, Verizon has removed the language that "ties" UNE rates to PAL and PASL rates, and has indicated, as NEPCC has suggested, that the rates shall be as specified in Part M, Section 1 of the tariff. Also, in response to NEPCC's objections, Verizon removed Part B, Sections 1.1.2.A and 1.2.2.A of the proposed tariff, which contained redundant language subjecting PAL and PASL services to the same regulations as one-party business exchange service. In addition, Verizon deleted a redundant indemnification provision in Section 1.5.3.B of the proposed tariff. We determine that these modifications address NEPCC's concerns and are in compliance with the Department's June 23, 2004 Order.

## 2. Increase in Residential Dial Tone Line Rate

We now turn to Verizon's proposed increase in the Dial Tone Line rate for basic residence services. We determine that an exogenous cost petition and investigation are not required because the Department previously approved a revenue-neutral adjustment to account

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<sup>3</sup> In D.P.U. 89-300 at 273, the Department stated that "we must consider the relationship between the rates that NET charges for its own pay telephone services and the rates that [payphone service] providers must pay NET. . . . The [credits] discussed by the parties are a means of addressing the wholesale/retail price disparity created by this situation."

for changes in payphone access rates in Verizon Alternative Regulation, D.T.E. 01-31, and all that remained for the Department to determine in this proceeding was the degree of adjustment. Because our conclusions here are based on our conclusions in D.T.E. 01-31, we begin with an overview of that proceeding.

In D.T.E. 01-31, the Department evaluated a proposal by Verizon for regulation of its retail telecommunications services to succeed the “price cap” form of regulation that had governed Verizon’s retail operations since 1995. When the Department undertook its investigation into the sufficiency of competition for Verizon’s retail business services in the first phase of the D.T.E. 01-31 investigation, the Department identified certain of Verizon’s business services that “have historically been treated as retail services . . . but are primarily [ ] or exclusively intended for purchase by other carriers as wholesale services rather than by end-users as retail services.” D.T.E. 01-31-Phase I, at 36 (May 8, 2002) (footnote omitted). The Department specifically identified PAL, PASL, collocation, and special construction as such services, excluded these services from the pricing flexibility granted to Verizon’s retail business services, and required Verizon to file a proposal to price these services on a UNE basis. Id. at 94-95.

In Phase II of D.T.E. 01-31, the Department approved a compliance filing by Verizon to re-price these services at UNE rates (along with the re-pricing of other wholesale services, such as switched access), and permitted Verizon to account for any revenue loss through a revenue-neutral offset to the Residential Dial Tone Line rate. D.T.E. 01-31-Phase II, at 78-79, 92-93 (April 11, 2003). However, although Verizon proposed new UNE-based rates

for PAL and PASL, and accounted for the re-priced PAL and PASL rates in its revenue-neutral offset calculation in D.T.E. 01-31, the Department deferred approval of the PAL and PASL rates to this proceeding – D.P.U./D.T.E. 97-88/97-18 (Phase II) – in order to determine whether Verizon’s proposed rates for PAL and PASL complied with the requirements established by the FCC in its series of orders concerning payphone access services.

D.T.E. 01-31-Phase II, at 43; see also June 23, 2004 Order at 9-10. The Department stated:

“When [D.P.U./D.T.E. 97-88/97-18 (Phase II)] is completed, the Department will require Verizon to incorporate the conclusions of that proceeding into its alternative regulation plan.”

D.T.E. 01-31-Phase II, at 43. Therefore, consistent with our determinations in D.T.E. 01-31, rate changes for PAL and PASL as determined in this proceeding are properly accompanied by symmetrical (i.e., revenue-neutral) changes in Verizon’s Residential Dial Tone Line rate.

### 3. Review of Calculations

Based on our review of Verizon’s calculations and consideration of the Attorney General’s comments and Verizon’s response, we determine that Verizon has correctly calculated the revenue-neutral increase. As Verizon points out, it used the same methodology that it used to calculate the revenue effects of the price changes for switched access and collocation that the Department approved in D.T.E. 01-31-Phase II. In addition, Verizon has appropriately limited the increase to those residential services that are price regulated under its Alternative Regulation Plan and other calling plans where the Dial Tone Line is purchased separately, which is consistent with the pricing flexibility granted Verizon under the

Alternative Regulation Plan. This is the same method that Verizon proposed and the Department approved for the revenue-neutral increase established in D.T.E. 01-31.

In addition, regarding the Attorney General's assertion that Verizon has relied on stale data to calculate the local usage rate, we note that Verizon's calculations to determine the payphone access rates and, in turn, the Residential Dial Tone Line increase, are based on current (i.e., 2004) data, with the exception of Verizon's study to weight intra- and interoffice usage. However, this study is just one component of the calculation used to determine the local usage rate. Verizon has used the most currently available data to determine the weighting, and it would be unreasonable to require Verizon to conduct a new and burdensome study when the results would have a negligible effect on the calculation of the overall revenue adjustment.

Therefore, for the reasons discussed above, we approve Verizon's Compliance Filing, as modified by the substituted tariff pages contained in its September 16 and 21, 2004 filings, with an effective date of October 6, 2004.

III. ORDER

After due consideration, it is

ORDERED: That the Compliance Filing filed by Verizon Massachusetts on July 22, 2004, as modified by the substituted tariff pages contained in the September 16, 2004 and September 21, 2004 filings, is approved.

By Order of the Department,

\_\_\_\_\_/s/\_\_\_\_\_  
Paul G. Afonso, Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
James Connelly, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
W. Robert Keating, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Eugene J. Sullivan, Jr., Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Deirdre K. Manning, Commissioner